**S.B.Civil Misc. Appeal No.243/94**
**General Manager, Northern Railway,New Delhi**
**vs.**
**M/s Indian Oil Corporation Ltd.**

Date of Order: 16.10.2006

**HON'BLE MR. PRAKASH TATIA, J.**

Mr. Jagdish Vyas for the appellant.

This appeal is against the order of Railway Claims Tribunal, Jaipur Bench dated 27.5.1993 by which the Railway Claims Tribunal allowed the claim application of the applicant and awarded Rs.50,499/- as damages and costs of the goods and interest @ 12% per annum on Rs.46,338/- from the date of filing of the application, i.e. from 18.10.1982 till the payment is made.

Brief facts of the case are that eight wagons of HSD booked from Khandla to Bhagat-ki-kothi vide RR No.581825 dated 17.9.1979. In wagon No. SR/10194 there was 33120 ltrs. of HSD. This wagon met with an accident and due to derailment, almost all the liquid of the wagon destroyed.

The railway's plea was that there was no fault of the railway's employee and it was an unforeseen incident, therefore, under Section 73(i) of the Indian Railways Act, 1890, no charges can be awarded against the railway administration.

The Railway Claims Tribunal, after considering Section 73(i) of the

Act of 1890, held that though in enquiry the railway administration declared that there was no fault of any railway employee and it was the fault of the wagon manufacturer M/s A.B. & Co., Muzaffarnagar, still the railway cannot avoid its liability to pay compensation to the claimant.

The learned counsel for the appellant submitted that the Section 73(i) of the Indian Railways Act, 1890 clearly provides that the railway administration is not liable to pay compensation for loss, destruction, damages etc. if it arises from fire, explosion or by any unforeseen risk. It is submitted that derailment was not due to the negligence of any of the railway employee and, therefore, it was in fact covered under "unforeseen risk." It is also submitted that enquiry was conducted by the railway administration and there is no reason to not to believe the said enquiry.

I considered the submissions of the learned counsel for the appellant and perused the facts of the case as well as the reasons given by the Railway Claims Tribunal.

It is not in dispute that the goods were booked by the claimant and the goods were destroyed in the railway accident of derailment of the wagon in question. The plea of the appellant is that because of breakage in the axial, the accident occurred. The blame has been put on the manufacturer M/s A.B. & Co., Muzaffarnagar. It appears from the record that the railway administration did not produce any evidence

except the enquiry report. If it was a manufacturing defect even then it was the duty of the railway administration to demonstrate that they took every care of not putting the defective wagon on rail but there is no evidence for this purpose. It is also not clear from the record that when the said wagon was manufactured and was running on rail. In absence of it, it cannot be said that the only manufacturer was responsible for the defect resulting into the accident if the wagon was on rail since long.

In view of the above, I do not find any merit in this appeal. Hence the appeal of the appellant is dismissed.

( **PRAKASH TATIA ),J.**

mlt.